

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Calvin Jones,

Plaintiff,

-against-

City of New York, Police Commissioner Raymond W.
Kelly, Deputy Inspector Alan E. Abel, Police Officer Cruz
Pearsall, Shield 28066, Sergeant Oscar A. Parades, Shield
03930,

Defendants.

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ANSWER TO COMPLAINT

JURY TRIAL DEMANDED

07 Civ. 3850

Defendants¹ Cruz Pearsall and Oscar A. Parades, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the complaint, except admit that plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph “2” of the complaint.
3. Deny the allegations set forth in paragraph “3” of the complaint, except admit that plaintiff purports to seek damages as stated therein.
4. Deny the allegations set forth in paragraph “4” of the complaint, except admit that plaintiff purports to bring this action and invoke the Court’s jurisdiction as stated therein.
5. Deny the allegations set forth in paragraph “5” of the complaint, except admit that plaintiff purports that jurisdiction is proper as stated therein.

¹ Upon information and belief defendant Abel has not been served with process.

6. Deny the allegations set forth in paragraph “6” of the complaint except admit that plaintiff purports that venue is proper as stated therein.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the complaint.

8. Admit the allegations set forth in paragraph “8” of the complaint.

9. Deny the allegations set forth in paragraph “9” of the complaint, except admit that on February 17, 2006 Raymond Kelly was the Commissioner of the New York City Police Department, and admit that plaintiff purports to bring suit against Kelly in his official and individual capacities.

10. Deny the allegations contained in paragraph “10” of the complaint, except admit that plaintiff purports to bring suit against Abel in his official and individual capacities.

11. Admit the allegation in paragraph “11” of the complaint that Pearsall and Paredes were employees of the NYPD, and admit that plaintiff purports to bring suit against them in their individual capacities.

12. Defendants state that the allegations set forth in paragraph “12” of the complaint constitute conclusions of law rather than averments of fact and, accordingly no response is required. To the extent a response is required, defendants deny the allegations.

13. Deny the allegations set forth in paragraph “13” of the complaint, except admit that the New York City Office of the Comptroller received a notice of claim purportedly signed by Calvin Jones and that a settlement of the claim has not been reached.

14. Deny the allegations set forth in paragraph “14” of the complaint.

15. Deny the allegations set forth in paragraph “15” of the complaint.

16. Deny the allegations set forth in paragraph “16” of the complaint.

17. Deny the allegations set forth in paragraph “17” of the complaint and all subparts thereof.

18. In response to the allegations set forth in paragraph “18” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

19. Deny the allegations set forth in paragraph “19” of the complaint.

20. Deny the allegations set forth in paragraph “20” of the complaint.

21. In response to the allegations set forth in paragraph “21” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

22. Deny the allegations set forth in paragraph “22” of the complaint.

23. Deny the allegations set forth in paragraph “23” of the complaint.

24. Deny the allegations set forth in paragraph “24” of the complaint.

25. Deny the allegations set forth in paragraph “25” of the complaint.

26. Deny the allegations set forth in paragraph “26” of the complaint.

27. Deny the allegations set forth in paragraph “27” of the complaint.

28. Deny the allegations set forth in paragraph “28” of the complaint.

29. In response to the allegations set forth in paragraph “29” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

30. Deny the allegations set forth in paragraph “30” of the complaint.

31. Deny the allegations set forth in paragraph “31” of the complaint.

32. Deny the allegations set forth in paragraph “32” of the complaint.

33. In response to the allegations set forth in paragraph “33” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

34. Deny the allegations set forth in paragraph “34” of the complaint.

35. Deny the allegations set forth in paragraph “35” of the complaint.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. Deny the allegations set forth in paragraph “37” of the complaint.

38. In response to the allegations set forth in paragraph “38” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Deny the allegations set forth in paragraph “40” of the complaint.

41. In response to the allegations set forth in paragraph “41” of the complaint, defendants repeat and reallege their responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

42. Deny the allegations set forth in paragraph “42” of the complaint.

43. Deny the allegations set forth in paragraph “43” of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

44. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

45. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any Act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

46. Any injury alleged to have been sustained resulted from plaintiff' own culpable or negligent conduct and was not the proximate result of any act of the Defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

47. At all times relevant to the acts alleged in the complaint, Defendants City of New York's agents and officials acted reasonably in the proper and lawful exercise of their discretion. Therefore, defendant City is entitled to governmental immunity from liability.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

48. Punitive damages cannot be recovered from the City of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

49. Plaintiff has not complied with the conditions precedent to suit.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

50. The individual defendants have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

51. Plaintiff provoked any incident alleged in the complaint.

WHEREFORE, defendants City of New York and Raymond Kelly request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 26, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City of New York,
Raymond Kelly, Oscar Parades and Cruz Pearsall
100 Church Street
New York, New York 10007
(212) 788-0303

By: _____
LISA RABINOWITZ (LR 7946)
Assistant Corporation Counsel